IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.968 OF 2005
WITH
CIVIL APPLICATION NO.1140 OF 2005

M/s.Mahavir Book House. ...Appellant.
Vs.
Municipal Corporation for Greater Mumbai & Anr. ...Respondent.
....
Mr. Indu Prakash i/b. Mr.V. V. Mishra for the Appellant.
Mrs. Geeta Joglekar for Respondent No.1.
Mr.Sanjay Kothari with Mr.Shailesh Thakkar for Respondent No.2.
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CORAM : DR. D.Y. CHANDRACHUD, J.

November 19, 2005.

P.C.:

On 11th October 2003, a notice was issued to the Appellant under Section 354A of the Mumbai Municipal Corporation Act, 1888 in which it has been stated that he has unauthorisedly constructed a loft of 2.50 metres x 2.40 metres and at a height of 2.00 metres from the ground level using M.S. Girders and ladi coba above the premises being Mahavir Book House, situated at 140/142, Perin Nariman Street, Fort, Mumbai. In response to this notice, the Appellant addressed a reply through his Advocate on 13th October 2003 stating that the Appellant did

not wish to “fight a petty issue” and that he would himself remove the loft within a few days' time. The Municipal Corporation once again issued a notice on 4th March 2005 upon an unauthorised construction being noticed once again. The unauthorised work consists inter alia of (i) Covering of an open chowk admeasuring 3.20 metres x 1.60 metres with the height of 3.20 metres after merging that area into the shop; (ii) Unauthorised covering of W.C. And merging the same into the shop' (iii) Unauthorised construction of wooden loft; and (iv) Unauthorised construction together with masonry wall. The Learned Trial Judge while dismissing the Notice of Motion has held that the documents which were relied upon by the Appellant related to the shop whereas the notice related to additional work which is unauthorisedly carried out without the sanction of the Municipal Corporation. Counsel appearing on behalf of the Appellant has produced certain plans sanctioned by the Housing Board and sought to submit that there is no change in the position of the premises. Prima facie it would appear that even in 2003, an unauthorised construction of a loft was sought to be carried out and after it was removed upon notice by the Municipal Corporation the Appellant again sought to restore the position. In these circumstances, work was again carried out unauthorisedly

which was clearly illegal. The Trial Court has found that the open chowk has been covered by merging the same into the area of the shop. Certain photographs have been produced before the Court demonstrating the nature of the work which has been carried out.

Having heard Counsel, I am of the view that the action of the Municipal Corporation does not suffer from any error that would warrant interference in this appeal. The Appellant was heard by the competent authority of the Municipal Corporation and before the Learned Trial Judge and documents which were sought to be relied upon, have been considered. There is no merit in the appeal which is accordingly dismissed. Counsel appearing on behalf of the Appellant states on instructions that the Appellant should, within four weeks restore the premises to their original condition and that the Appellant be allowed to do so. In my view, the aforesaid request is fair. The Municipal Corporation shall not implement the order of the Assistant Municipal Commissioner for a period of four weeks from today within which period the Appellant shall restore the premises so as to comply with the requirement of the notice under Section 351. In the event that the Appellant fails to do so within a period of four weeks, the Municipal Corporation shall, after the expiry of the period of four weeks, take steps in

accordance with law.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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